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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,601	12/26/2001	Howard L. Vandersall	41482/27122	2565

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7  
EXAMINER

TOOMER, CEPHIA D

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 06/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/033,601

Applicant(s)

VANDERSALL ET AL.

Examiner

Cephia D. Toomer

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-78 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 1714

### DETAILED ACTION

This Office action is in response to the amendment filed March 17, 2003 in which claims 1-12, 21-29, 31-33, 42-45, 47-64 and 73-78 were amended. All previous rejections are withdrawn in view of the amendments to the claims.

#### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-12, 21-33, 42-64 and 73-78 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-14, 16-24, 26-36, and 38-43 of copending Application No. 09/722,567.

Although the conflicting claims are not identical, they are not patentably distinct from each other because the composition of the present invention contains all of the components of the copending application plus an additional component of the present invention. The present invention anticipates the claims of 09/723,567.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-57 and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Application 911067 in view of Kasten (US 4,247,435).

EPA teaches a fire suppressant composition specifically adapted for aerial application wherein the composition comprises water, 19-99% ammonium polyphosphate, 0-10% attapulgite clay (suspending agent), guar gum, corrosion inhibitors, stabilizers and red iron oxide (water soluble corrosion inhibitor) (see abstract; paragraphs 7, 8, 18, 23; Example I, II, 3). In Example 3, EP discloses twoazole corrosion inhibitors present in a dry concentrate, liquid concentrate and final mix. The compounds are present in amounts from 0.03 to 0.27% (see Table F). EP teaches the limitations of the claims other than the differences that are discussed below.

In the first aspect, EP differs from the claims in that it does not contain a phosphonate compound. However Kasten teaches this difference.

Kasten teaches that fire retardant compositions based on ammonium polyphosphate carbonize under the action of heat to form a carbon foam (see col. 1,

Art Unit: 1714

lines 24-26). Kasten teaches 0.1-10% chelating agents comprising phosphonic acid and their salts (Na, K, etc.) wherein the compounds function is to impart viscosity stability to the fire retardant composition. The compounds include hexamethylene diamine-tetrakis-methylene phosphonic acid and aminotri(methylene phosphonic acid) (see col. 2, lines 59-63; col. 3, lines 20-26 and col. 4, lines 5-8; col. 7, lines 49-51).

It would have been obvious to one of ordinary skill in the art to have combined the ammonium polyphosphate base fire retardant composition with the phosphonic acid chelating agent because EPA teaches that its ammonium polyphosphate base fire retardant requires a stabilizer and Kasten teaches that chelating agents function as viscosity stabilizers in ammonium polyphosphate fire retardant compositions.

In the second aspect, EPA differs from the claims in that it does not specifically teach the corrosivity of the corrosion inhibitors (claims 4, 8, 29, 31, 49, 53). However, no unobviousness is seen in this difference because EPA teaches that the corrosion inhibitor is present in its composition in a range that overlaps the range in the present composition. Therefore, it would be reasonable to expect that the corrosivity of the corrosion inhibitors would be within the claimed corrosivity range.

With respect to claim 78, EPA teaches that the ammonium polyphosphate is often referred to as 11-37-0, 12-14-0, and 13-42-0, all well plant fertilizers. Therefore, EPA meets the limitation of claim 78.

5. Claims 58-77 are rejected under 35 U. S. C. 103(a) as being unpatentable over EPA 911067 in view of Kasten (US 4,247,435) further in view of Crouch (US 6,019,176).

Art Unit: 1714

EPA and Kasten have been discussed above. EPA fails to teach the method of inhibiting corrosion of a corrodible material such as steel, brass or aluminum. However, Crouch teaches that ammonium polyphosphate fire retardants are corrosive to metal parts of storage bins, mixing apparatus, and application equipment made of aluminum, steel or brass (see col. 2, lines 10-21).

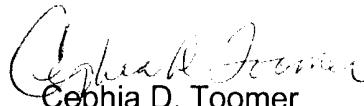
It would have been obvious to one of ordinary skill in the art to have used the fire retardant composition to inhibit corrosion to the corrodible material of the aerial applicator of the fire retardants (the plane) because Crouch teaches that fire retardants that contain corrosion inhibitors prevent corrosion to the principal structural component of aircraft vehicles used to aerially apply such retardants.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 703-308-2509. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Art Unit: 1714

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
Cephia D. Toomer  
Primary Examiner  
Art Unit 1714

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June 4, 2003